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ABSTRACT

The general intent of the Federal Communications Commission (FCC) with regard to cable television (CATV) is to allow it enough re-broadcasting and importation of signals so that it can get started without giving CATV so much that it injures existing broadcast television or has no incentive to push into non-broadcast, broadband services which are its unique potential. There are many problems still to be worked out, such as a system of copyright compensation for re-broadcast programs; federal, state, or local jurisdictions; over-promising to get franchises; and understanding a maze of rules which may not even work. However, it is clear that the time has come for cable television to begin to act and experiment, using the spirit of the rules--better service for the public-- and not playing games with the letter of the rules. (RH)

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REMARKS BY:

DEAN BURCH, CHAIRMAN
Federal Communications Commission

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Every time we get together, it seems to be the first day of Year One. There is always some major milestone just behind us or just ahead. Today is no exception.

(Particularly today, as a matter of fact. The NCTA itself is marking a change in dynasty. It's been a pleasure doing business with John Gwin; I anticipate the same with Bill Bresnan and David Foster. All three, it seems to me, represent cable's own best image: equal measures of energy, imagination and responsibility--with a little prayer thrown in. Clearly, the NCTA is alive and well.)

A year ago, the Commission was hammering out its Letter of Intent to the Congress. The essence of that document was an "adequate service formula", tailored to market size, that would permit just enough broadcast signal carriage to give cable a leg up--that would at the same time hold the impact on the existing broadcast system to a tolerable minimum--and that would quite deliberately keep cable lean and mean. We were seeking, in effect, a "competitive entry" formula. And the only guarantee we offered anyone, cable or broadcasting, was an honest chance to serve the public.

The core of our policy was to make cable's evolution dependent on those nonbroadcast, broadband services that are unique to cable technology. It still is the core of our policy.

A year ago, I said to you at your Washington meeting that now the ball is in cable's court--that it's up to you whether cable is going to be just another way of moving broadcast signals around (hardly worth the ulcers involved) or whether it is going to become a genuinely new and competitively different medium of communications, offering everything from entertainment and sports and movies to classroom instruction and commercial services and public "rap" sessions. That <u>was</u> up to you. It still is.

Now, ten months later, the Letter of Intent represents the Dead Sea Scrolls of cable--simply the first draft of the Bible. The Consensus Agreement was entered into, and in my view is binding on all the principals. The <u>Cable Television Report and Order</u>, the true gospel, is in force. Round One of reconsideration involving petitions for stay is behind us. Round Two is close to completion.

(And without presuming on the other Commissioners' prerogatives, I do not now anticipate radical revisions in the March 31 rules.) The "freeze" and "regulatory lag" are, hopefully, nothing but reminders of the old days, gone forever.

It is not, of course, quite that simple. That there will be a cable industry in the nation's future seems to me no longer open to question. Competitive coexistence is a fact of life for you and broadcasting. But there are bugs in the new rules -- some of them the size of elephants -- and the precise shape of that future is dim. It is filled with imponderables.

Cable copyright legislation fits under both the "bug" and the "imponderable" category. Ending open warfare and moving to the negotiating table, and ultimately to legislation, was the whole thrust behind the Consensus Agreement. It was a reasonable compromise for which no apologies are necessary. That was why the Commission decided explicitly to implement its key provisions in the new rules. That is why I continue to call for hard, good faith bargaining on a fee schedule that all the parties can live with.

I haven't been in on any of the sessions, I don't intend to get directly involved, and I'm not going to engage in any speculation about "who shot John". I'm not even going to speculate about the effects of the District Court decision in CBS v. TelePrompTer. You can read it many ways. But I do say -- not for the first time and not for the last -- that unless and until cable is brought within the competitive program distribution market and pays a fair price for the product it uses, you will be operating under a cloud and on shaky foundations. And that is no way to build an industry.

Turning to another area of perplexity, the Commission opted for dual Federal/State-local jurisdiction because cable clearly calls some of both (and maybe all three) into play. We are attempting to integrate cable into a national communications structure. At the same time, it is clearly a local "convenience and necessity" -- in both the technical and substantive senses of that phrase. We left the line of demarcation hazy because, quite candidly, wewere not yet ready to draw it with precision. That had to be left to experience and experimentation. All of which leaves you in something of a no-man's-land. (Here in Illinois, as in a few other states where even intrastate jurisdiction is up for grabs, it's virtually a "free fire zone".)

This afternoon we will convene the steering group of a Federal/State Advisory Committee -- along with one on Technical Standards -- and,

hopefully, these committees will help in time to reduce the ambiguities. But there is one way that all of you can help right now--and that is by not playing games with the spirit of the rules. The same goes for state and local franchising authorities.

The rules set out basic access requirements, as you know -- one public channel in perpetuity, and an educational and a governmental channel free for an initial five-year experimental period. The rules also suggest reasonable franchise fees -- in the range of three to five percent of gross revenues. Deliberately, the rules do not tie down all the loose ends. That would freeze cable into a single mold, and it would represent a case of "decision first, evidence later". (We'll permit special showings and grant special exceptions from the start, but only on the basis of compelling presentations that the public will benefit.)

The obvious danger--and we can see it coming even if we're not sure what to do about it--is that both free-channel bonanzas and excessive franchise fees are likely to become bargaining chips in the bidding and franchising process. The temptation will be "promise now", whatever it may take, and worry later about the consequences. But, as usual, it will be the public who pays--either in the form of cross-subsidy from subscriber fees, or loading the burdens on cable to the point that the bird never will fly.

Don't count on the Commission to bail you out. Indeed, I cannot urge too strongly--and again the message is directed as much to state and local franchising authorities as it is to cable operators--don't force the Commission to bail you out. Game-playing, whether in the form of over-promise or under-performance, is not the mark of a responsible industry. And the simple solution is "don't play games".

I'm frank to confess that the rules are terribly complicated. Cable begins its new era in a regulatory maze. Because cable and broadcasting are so closely linked--in carriage and exclusivity rules, grandfathering, leapfrogging, viewing standards, you name it--I doubt that it could have been otherwise. The access requirements add another element of complexity. All we can promise is to be reasonable in applying the rules--and prepared to revisit them as we accumulate experience. At least we all begin life equal; we're as perplexed as you are.

The biggest of the imponderables, quite candidly, is that we don't yet

know if the rules will "work" at all. On the one hand, it may turn out that even the very limited amount of distant signal importation we're permitting will have unforeseen impact on over-the-air broadcasting. On the other hand, in an abundance of caution, we may have kept cable not so much "lean and hungry" as starved to death.

Nor do we really know how the exclusivity rules will work out in practice. They may leave little programming available to cable beyond tired re-runs and Charlie Chan movies. The leapfrogging rules may give cable in some parts of the country not much in the way of attractive distant independents to choose from. The access requirements may turn out to be one big public yawn--and the experimental channels may languish for want of imagination on the part of educational and governmental entities.

I've been deliberately laying out the worst possible prognosis, vastly overstated on the side of pessimism. I hope and expect that it won't come to pass. But the blunt fact is: we're not yet certain.

All I do know is that we are as anxious to find out as you are. We want cable to get moving--and that means we want the rules to work as intended. Otherwise it's two long, arduous years down the tube--and the great promise of cable, all that it may mean for new horizons of public service, still just a promise.

I want to stress that the rulebook is not carved in stone. Except for the complement of signals to which compulsory licenses will be applicable, it is open to change and refinement. We retain all our options.

Another thing about which I feel very confident is that the core of our policy is sound; that cable's future is and ought to be tied to those nonbroadcast services that are, in the last analysis, what cable is all about.

Last year I ran down the list of what some of these broadband services might be--indeed, what they already <u>are</u> in certain communities. I don't intend today to repeat that drill. Certainly I'm not going to stand up here and lecture you about the potentialities of your own industry.

There is no Burch Plan for the guaranteed future of cable television. For that matter, there can be no NCTA plan either. But I feel confident--for each community, for the New Yorks and Chicagos, as well as the East Overshoes and Splitlips--there is some combination of services that will get cable under way, sell it and establish it as a permanent feature of the landscape. Your job, and mine, is to find and effectuate that winning combination.

If we're able to do that, then the rules will work, bugs and all. And the Commission's effort will have paid off. The matter was expressed rather well, if I do say so myself, in the Cable Television Report and Order:

> For more than three years we have been gathering data, soliciting views, hearing arguments, evaluating studies, examining alternatives, authorizing experiments--turning finally to public panel discussions unique in communications rule making--and, in this effort, have necessarily postponed the substantial public benefits that cable promises. In these circumstances, we do not see that there can be any case for further delay. It is time to act.

We did act, and our commitment is for the long haul. The rest, ladies and gentlemen, is up to you.